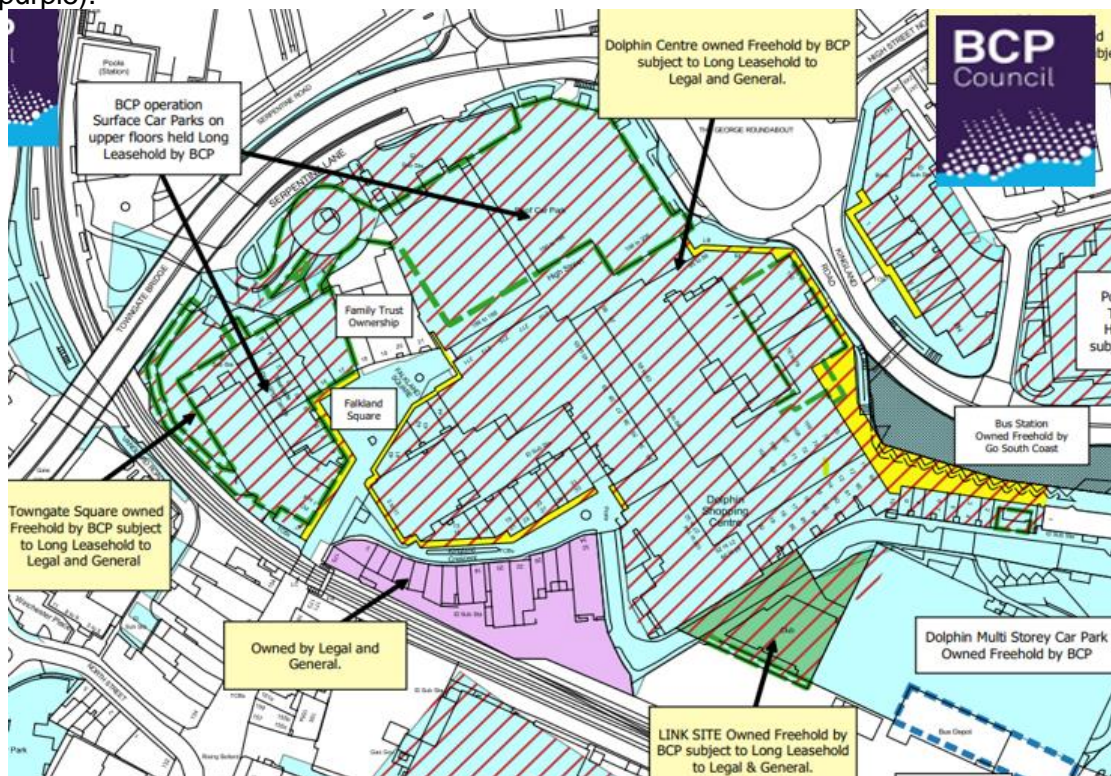


Report subject	Dolphin Shopping Centre Poole Update
Meeting date	7 February 2024
Status	Public Report
Executive summary	<p>This report concerns the subsisting Development Agreement (DA) dated 26th May 2017 between BCP Council and Legal and General Assurance Pensions Management Ltd (L & G) (the parties) covering Dolphin Centre, Towngate Centre, Link Mall and Kingland Crescent, Poole</p> <p>Due to the downturn in the retail market, the works required by the 2017 DA became unviable and L & G did not carry them out. This report is provided to update Cabinet and Council on the status of the 2017 DA and seeks approval to release the parties from their obligations under it in return for the financial settlement outlined in the Exempt report at Appendix 1.</p>
Recommendations	<p>It is RECOMMENDED that Cabinet recommend to Council:</p> <ul style="list-style-type: none"> a) To approve the release of the parties from their obligations under the Development Agreement dated 26th May 2017, subject to the financial settlement outlined in paragraph 21 to 23 of the Exempt Report at Appendix 1. b) To delegate authority to the Corporate Director for Resources, Chief Operations Officer, the Director of Finance, the Director of Law and Governance and the Corporate Property Officer in consultation with the Portfolio Holder for Dynamic Places and the Portfolio Holder for Transformation and Resources to explore terms and make recommendations in a future cabinet report for a further head lease restructure to facilitate an alternative scheme on the Development Agreement site with L & G or its successor.
Reason for recommendations	<ol style="list-style-type: none"> 1. Paves the way for the parties' consideration of an alternative head lease restructure that would facilitate an appropriate mixed-use development on the DA site and

	<p>adjacent sites (including the council's own multi storey car park) underpinned by the provision of new homes.</p> <p>2. For the reasons set out in paragraphs 2 to 6 of the Exempt Report at Appendix 1.</p>
Portfolio Holder(s):	Cllr Vikki Slade (Leader and Portfolio holder for Dynamic Places)
Corporate Director	Ian O'Donnell, Corporate Director for Resources
Report Author Contributor	<p>Irene Ferns – Senior Strategic Estates Manager</p> <p>Adam Richens, Director of Finance and Chief Finance Officer</p> <p>adam.richens@bcpcouncil.gov.uk</p>
Wards	Poole Town;
Classification	For Recommendation

Background

1. The Dolphin Shopping Centre, link Mall and Towngate Centre, shown on the image below, are let from the council to Legal and General (L & G) on long head leases. The buildings in the south terrace of Kingland Crescent, are owned freehold by L & G (shown in purple).



2. The council entered into a Development Agreement (DA) with L & G in 2017 which required L&G to carry out works (then estimated at £7.687m) to the Falkland Square and Kingland Crescent public realm and facades. On completion of the works, the council would acquire the south terrace of Kingland Crescent, and L & G would surrender its existing leases and be granted one combined longer 150-year lease, on revised financial terms, of the sites referenced in paragraph 1 above.
3. L & G also opted to do the “Argos works” (9 screen cinema and 4 adjacent casual dining restaurants). It obtained planning consent for the works but the agreement it had with the cinema subsequently fell through as, due to market conditions, they were unable to comply with certain conditions in it relating to securing the neighbouring restaurant lettings.
4. The Pandemic has further accelerated the decline in the retail market. In the interim L & G has delivered numerous measures which have improved the amenity value of the area, including the Kingland Project, installation of a new Falklands War Memorial in Falkland Square and numerous asset management initiatives within the shopping Centre itself, bringing health, leisure and education uses to diversify the town centre offering.

Summary of subsisting DA obligations not undertaken and subsequent asset management interventions to date

5. The Façade Works obligation comprised works of recladding to the façades that face Falkland Square and Kingland Crescent to improve their external appearance including the reduction of excessive signage and commercialisation on the buildings. L & G has since addressed this, to an extent, through its Kingland Project by its uniform treatment of the shop facades on the south terrace of Kingland Crescent.
6. The Public Realm Works obligation comprised works to replace the existing hard landscaping in the public realm area with a higher quality finish and design, the introduction of soft landscaping, replacement of street furniture and replacement of the Falklands War Memorial plaque with a more appropriate sculptural memorial to reflect its significance. L & G have now replaced the war memorial.
7. The Argos works are detailed in paragraph 3.
8. On completion of the DA works, the council would be obligated to acquire the freehold of the south section of Kingland Crescent, take a surrender of L & G’s existing head leasehold interests of the shopping centre and grant a new single 150-year long lease over the whole demise to L & G.
9. The council would also be obligated to keep the Dolphin MSCP open for the shopping centre for 25 years, restricting future development options for this site.
10. If all consents had been secured by L & G, new rent provisions would have triggered a base rent of £670,000pa for 5 years, then £500,000pa for the next 5 years and 11.7% of net rents received by L & G thereafter. The base rent was to shield the council from further downturn in the retail market and exposure to falling rents and voids for the first 10 years.
11. Under a separate agreement, and prior to 2019, L&G had already undertaken mall works (at a cost of £7.64m) and the council had completed upgrading works at a cost of £1.5m

to the MSCP. In addition, L & G had also previously carried out works to the Towngate facades at an estimated cost of £844,000.

12. Other interventions and investment by L & G since 2019 to reframe and reinvigorate the Shopping Centre offering include:

Kingland Crescent (South) 2021 to date

13. Investment by L & G to provide space for 10 local independents and start-ups, each given a vacant shop free of rent and business rates for two years. Retailers ranged from restored furniture to a surfboard shop, art gallery, gin bar etc.
14. In its first year "[Kingland](#)" generated an additional £2.2 million of spend across the Dolphin Centre, created over 30 new jobs and in terms of footfall was 16% ahead of its pre-Covid trend (2019). Since the opening of new operators, average turnover per unit has increased by 36% (over March to May 2023 versus the equivalent period in 2022). Total turnover across all operators, is up by 9% (source L & G).
15. For the first half of 2023, footfall within the shopping centre was 10.6% more than in 2022. Footfall is now ahead of 2019 levels, whereas the average UK shopping centre is c.15% below 2019. 60% of original Kingland brands have agreed to a longer-term turnover partnership, with the remaining 40% occupied by new entrants (source L & G).

Education 2021-22

16. The council's Adult Skills & Learning Centre was relocated from its former site in Oakdale to the first floor of the Dolphin Centre, involving the conversion of six first floor vacant retail units.

Health/ Wellbeing 2021

17. An NHS health care hub is now in the heart of the shopping centre on the second floor of Beales (Breast screening, ophthalmology, AAA Screening, Orthopaedics and Dermatology). 15,535 patients were seen between December 2021 and Jan 2023. 57% of patients go on to shop or consume in the centre (source L & G).
18. The dermatology capacity has tripled from pre-pandemic levels to accommodate 96 patients an hour and the orthopaedic specialty has experienced a 92% reduction in people waiting over 78 weeks for an appointment (source: NHS Dorset March 2023).

Flexible Offices 2022 - 23

19. Located on the first and second floors of Brownsea House, above the bus station, significant investment was made by L & G, outlined in confidential Appendix 1 to establish the Foundry (a Joint Venture by L & G and a flexible office operator) which opened in April 2023, providing around 12,500 sq. ft. of refurbished incubator/ workspaces designed for SMEs in Poole.

Leisure 2022

20. Boom Battle/ Flip Out have taken the former M & S unit. Three floors provide a competitive entertainment offer appealing mainly to families with younger children, with attractions including: Interactive Football, Laser Tag, Bumper Cars, Battle Cannon Arena, Roller Rink, Soft Play and arcades.

Community 2022-23

21. The Public corridors of the Dolphin have been reimagined by L & G to create a place where people will now eat, meet, work, rest and play. This includes the installation of an

Amphitheatre next to Beales. An Indoor market is thriving each Saturday and a programmed series of 300 - 400 local events take place each year in the heart of the Centre. "Gather" also operates in Unit 33 – free to hire for different events & conferences.

22. Since the DA completed in 2017, UK retail has been in a state of flux, driven for the most part by the ongoing shift to online and changes in consumer behaviour. More recently, this has been compounded by rising costs such as business rates, wage price inflation, Brexit-related uncertainty, the pandemic and the cost-of-living crisis and rising energy prices fuelled by the war in Ukraine.
23. The long-term outlook is that there is likely to be significantly less retail space going forward, but that which remains will need to have a clear purpose. Moreover, it is key to note that in November 2023, internet sales accounted for nearly 27 percent of all retail sales in Great Britain rather than in physical stores (source Statista). Success in the future will therefore be based on a balanced approach to physical footprint, digital alignment and logistics execution. Ultimately, shopping centres will need to evolve and the model of a scheme with a 50% or higher fashion and department store mix is now outdated. L & G has been addressing this need since 2020, bringing benefits to the public in terms of improved amenity value and to the council itself, given its investment stake in the shopping centre.

Options Appraisal

Option 1: Do nothing.

24. This is not recommended as the DA would still subsist which would add uncertainty and complications to any new agreement for an alternative restructure.

Option 2: Enforce the DA through bringing a High Court action for Specific Performance or a claim for damages.

25. This is not recommended for the reasons outlined in paragraph 12 of the Exempt report at Appendix 1.

Option 3: Enter into an agreement for the release of both parties from their obligations under the DA in return for an out of court negotiated settlement.

26. This is the recommended option for the reasons set out in paragraph 13 of the Exempt report at Appendix 1.

Consultation

27. The Leader and Portfolio Holder for Dynamic Places and the Lead Member for Regeneration have been consulted and are supportive of the paper coming forward. Ward Councillors have also been briefed and feedback included the desire to see new proposals for the site coming forward soon, with consideration of how a new level crossing may be provided for in the future to enable increased frequency of trains through the whole conurbation.

Summary of financial implications

28. Details are set out fully in the Exempt Report at Appendix 1.

Summary of legal implications

29. Details are set out fully in the Exempt Report at Appendix 1

Summary of human resources implications

30. Releasing the parties from the DA would incur minimal officer time and would allow the focus to be shifted solely to aligning any proposals for the DA site with the council's aspirations for a wider Poole TCN master plan.

Summary of sustainability impact

31. The council has signed up to the climate change emergency and as such it is critical that decision makers consider the sustainability impact of their decision. The proposal seeks to resolve an outstanding contract dispute and the recommendation for resolving it would not change the status quo, therefore there is no sustainability impact. Any alternative proposals would be subject to a full Decision Impact Assessment

Summary of public health implications

32. Reviewing these, place making proposals is important to fully capitalise on the community of Poole's assets, inspiration and potential. Any new proposals for the site would aim to create additional new homes and a public space that would promote people's health and well-being by ensuring the creation of a place where people will want to dwell, with a balanced mix of commercial uses that will reduce the potential for more vacant shops.

Summary of equality implications

33. Any new proposals for the site would be subject to an equalities impact assessment that would ensure access for all including disabled shoppers and visitors to the town centre. In the meantime, there is no proposed change that would have equality implications.

Summary of risk assessment

34. The financial, legal and other risks around enforcement and release are explained at paragraphs 14 to 23, 24 to 44 and 46 to 49 respectively of the Exempt Report at Appendix 1.
35. Completing the DA would result in the council being obligated to keep open its own Multi Storey Car Park (MSCP) for the shopping centre for 25 years as this is a condition in the new 150- year lease to be granted to L & G, following completion of the DA works. This would impede the council's ability to achieve wider scale Poole TCN regeneration.

Background papers

Agenda, Report and Minutes of Cabinet - 1 November 2016.

Agenda, Report and Minutes of Council 15 November 2016 - Town Centre Regeneration – Lease Restructure of Dolphen Centre, Towngate Square and Kingland Crescent.

Appendices

Appendix 1 – Dolphin Shopping Centre, Poole, Update **Exempt Report** (pursuant to Schedule 12A s3 (Information relating to the financial or business affairs of any particular person (including the authority holding that information)) and s5 (Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings) Local Government Act 1972